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COMMENT: PROCEEDING WTB 16-290

1. Once again Terrestar – through its attorneys – delivers another non-responsive comment in its bid to have its former 1.4 GHz Part 27 licenses reinstated. Once again TerreStar ignores expansive, well documented critical commentary filed in this proceeding from its former minority shareholders. As usual, TerreStar attempts to rewrite history. It is a fact that there is a long history of bad faith by the company's fiduciaries toward its oppressed minority shareholders and later in its bankruptcy from October 20, 2010 to March 7, 2013.

2. In 2008, if TerreStar had "immediately…set to work…deploying a smart grid network…" as noted in its comment, why did they obfuscate the existence of this "ecosystem" for the 1.4 GHz band throughout the bankruptcy proceedings? Reference to this repeated obfuscation by Sarah Schultz for the debtors during court hearings in 2011-12 has been previously conveyed to the commission in a prior comment. [1] In early September of 2010 Harbinger / Lightsquared leased the spectrum in a sweetheart deal to an insider of TerreStar – Phil Falcone – with the intention of using it for smart grid and smart meter utility applications. The lease committed to pay $1 Million per month initially, rising to $2 Million per month to TerreStar, with an option to buy the 1.4 GHz spectrum for $250 Million.

3. TerreStar stated this salient fact in this proceeding in the Eugene Scalia/Gibson Dunn authored comment for TerreStar dated May 4, 2018. [2] [3] Had TerreStar incorporated smart

[1] See pg. 7-9: https://ecfsapi.fcc.gov/file/10514686924369/Jeffrey%20M%20Swarts%20-%20Opposition%20to%20Terrestar%20License%20Extensions%20-%201.pdf
[2] See pg. 4: https://ecfsapi.fcc.gov/file/10514686924369/EXHIBIT%20E%20-%20Airspan_Presentation_Winncom_0412.pdf

utility ecosystem for the 1.4 GHz spectrum into its valuation during the bankruptcy, the outcome for shareholders would have been very different. Instead, under a SEC Confidential Treatment Order dated January 4, 2010, the company transferred the spectrum asset to a non-debtor sub-corporation – Terrestar 1.4 Holdings LLC – in preparation for its bankruptcy just 10-months later – in violation of U.S. Bankruptcy law. This transfer occurred unbeknownst to the company's shareholders and the investing public – gutting the foundation for its timely and legitimate valuation. LightSquared abandoned the 1.4 GHz lease after its Chapter 11 filing, but before the TSC 3rd Plan of Reorganization was confirmed on October 24, 2012. By then motions for an examiner and equity committee had been repeatedly been denied by the Court. Motions for reconsideration and appeals were also denied. We walked into the Confirmation hearing without attorneys or financial advisors in a carefully scripted cram down of equity protection rights.

4. TerreStar now conveniently admits that they didn't know about the WMTS interference until after the company emerged from bankruptcy – despite the prior existence of WMTS devices in adjacent spectrum. They state in the Gibson Dunn authored Timeline that:

> "December 3, 2013: In a meeting with FCC staff, TerreStar learns that there may be interference arising between Smart Grid operations and next generation WMTS devices, even if both services fully comply with FCC rules; FCC staff suggest that TerreStar reach out to WMTS device manufacturers to discuss." [4]

5. Therefore – from all known evidence – TerreStar not only had obfuscated the existence of the smart grid business to the court for more than 2-years, but they believed it would be successful and grow rapidly once the company emerged from bankruptcy. There were then TerreStar smart grid networks operating in New Jersey, Pennsylvania and Ohio as part of the First Energy pilot program. These actions and many others undermine TerreStar's current

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[3] See TerrStar Timeline pg. 1-2: https://ecfsapi.fcc.gov/file/105040886503738/TerreStar%20Letter%20to%20FCC%20(5.4.2018).pdf

[4] Ibid, pg. 2.

assertion that it "has acted in good faith". Perhaps what they mean is that they are *now* acting in good faith – now that they are being challenged on their adequacy as spectrum licensees under the FCC's Character and Candor guidelines. They were not acting in good faith in the lead-up to the Chapter 11 petition filing or during its pendency as the 16-290 Proceeding docket amply demonstrates.

6. Bankruptcy is a messy business. Courts make decisions on incomplete and manipulated information all the time. Most often it is the small individual investor in common stock that bears the brunt of negotiations between self-serving and at times maliciously competitive banks, funds and trade creditors. In the case of TerreStar, however, we presented substantial evidence on multiple occasions. We asked for and were refused a court-appointed examiner on multiple occasions – primarily on the basis of cost to the estate. That argument rings hollow when one realizes that the TerreStar estates spent about $29 Million on attorney fees that had one goal – to eliminate the equity and convert ownership of the company. An examiner would have uncovered the full extent of the nascent smart grid business and used the WMTS incumbents in adjacent spectrum as a key comparable in the valuation of the 1.4 GHz spectrum.

7. Is there a way forward in this proceeding short of beginning anew with a new licensee? Thus far, there have been five known professional valuations of the 1.4 GHz spectrum: 1) Auction 69 in 2007 which was valued at $123,599,000; 2) The Jefferies valuation of 2008 which found $533.4 million, $640 million and $856.2 million, or $0.23, $0.29 and $0.37 MHz-POP; 3) The Blackstone (RKF) valuation by Steve Zelin in bankruptcy, which found a value of $177.5 million or $0.06 to $0.09 / MHz POP; 4) the John Dooley/Jarvinian valuation which

found $0.23 to $0.80 MHz-POP for a partially aggregated band; and finally 5) The 2018 Ivan Arteaga valuation which found $0.24 to $0.38 MHz-POP with no aggregation requirement. [5]

8. What do all of these valuations have in common that has not been evaluated or considered in arriving at their respective valuations? None of them used the WMTS market in the adjacent spectrum bands as a comparable – even though there was such an ecosystem in development subsequent to the Jefferies valuation in 2008.

9. Since this is the market that TerreStar wishes to address in its new incarnation as TerreStar Medical, the FCC should order such a valuation study so that interested parties would have current knowledge about the expected size of the market and the magnitude of the public interest envisioned. This would give the FCC a contemporary valuation with a known similar ecosystem. Since the company has lost the licenses because they did not build out their network within the 10-year Part 27 rules, perhaps the FCC could impose additional fees calibrated to the WMTS market valuation study in exchange for the reinstatement of the licenses.

10. There are multiple benefits to this approach. The work accomplished and the intellectual property that TerreStar and other equipment suppliers have created would not go to waste. The network could be deployed expeditiously, serving the public interest, the medical community and its patients. TerreStar would be compelled to deploy or lose the spectrum if not accomplished within a specific timeframe – as defined by the prospective FCC order. And, finally, as part of this settlement, a carve out for the minority shareholders of old Terrestar could finally be justly compensated with cash and warrants in a *public* corporation – TerreStar Medical – calibrated on a pro rata basis to their highest holdings of TSTR stock, the $544.5 million in bankruptcy creditor liabilities and consideration for lost interest.

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[5] See pg. 57, https://ecfsapi.fcc.gov/file/10322243083431/Valuation%20Study%20Report%20of%20the%201.4%20GHz%20Spectrum%20done%20by%20Ivan%20Arteaga.pdf

11. The wrongly eliminated minority shareholders of TSTR stand willing and able to work with the FCC and TerreStar Medical on this matter. This approach would provide substantial benefits to all parties and reward former minority TSTR shareholders – with peak holdings of approximately 20.5 million shares – for their assistance as whistleblowers in bringing this matter to a successful conclusion. A settlement so envisioned would serve the public interest with minimal disruption to the enterprise and contribute again significantly to the United States treasury.

Respectfully submitted

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